

REMARKS

The pending Office Action addresses and rejects claims 1-9 and 11-17. Reconsideration and allowance is respectfully requested in view of the following remarks.

Amendments to the Claims

Applicants amend claims 1 and 11 to recite a “slot-free distal tip.” Support for this recitation can be found throughout the specification, at least at paragraphs [0022] and [0027] of the published application. Claims 2 and 12 are amended to correspond to amended claims 1 and 11.

Applicants also add new dependent claims 20 and 21, which recite that a distal-most end of the sheath of claims 1 and 16 include bore formed therein for receiving a guide wire. Support for this recitation can be found throughout the specification, at least at paragraph [0027] of the published application.

No new matter is added.

Rejection Pursuant to 35 U.S.C. §102

The Examiner maintains the rejection of claims 1, 4-9, 11, 12, and 14-17 pursuant to 35 U.S.C. §102(b) as being anticipated by U.S. Publication No. 2002/0072797 of Hays, which is now U.S. Patent No. 6,554,862. As noted above, Applicants amend independent claims 1 and 11 to recite a graft fixation device (claim 1) or a kit that includes a graft fixation device (claim 11) having a slot-free distal tip. Hays does not teach or even suggest a graft fixation device having a slot-free distal tip. To the contrary, Hays discloses a fixation device having a distal tip (409) with cut-out areas (452) to facilitate radial expansion in the distal cross-section of the sheath. See Col. 9, line 67 to Col. 10, line 1. Claims 1 and 11, as well as claims 4-9, 12, and 14-17 which depend therefrom, therefore distinguish over Hays and represent allowable subject matter.

Rejections Pursuant to 35 U.S.C. §103

The Examiner maintains the rejection of dependent claims 2 and 13 pursuant to 35 U.S.C. §103(a) as being obvious over Hays. The Examiner also maintains the rejection of dependent claim 3 pursuant to 35 U.S.C. §103(a) as being obvious over Hays in view of U.S. Patent No. 6,099,530 of Simonian. As noted above, Hays does not teach or even suggest a slot-free distal


tip. Simonian does not remedy the deficiencies of Hays, as Simonian likewise does not teach or even suggest such a tip. Applicants further note that it would not have been obvious to modify Hays to include a slot-free distal tip, as Hays specifically requires that the tip include slots to allow for radial expansion. The use of a slot-free tip would prevent the fixation device from expanding, and would also likely interfere with fracture of the fracture regions formed between the sidewalls. Accordingly, claims 2, 3, and 13 distinguish over Hays and Simonian and represent allowable subject matter.

Conclusion

Applicants submit that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

Respectfully submitted,

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